

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>CHARLES AND TINA SMITH,</p> <p>v.</p> <p>Respondent:</p> <p>PARK COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 66022</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on January 19, 2016, Debra A. Baumbach and Sondra W. Mercier presiding. Mr. Smith, Petitioner, appeared pro se on behalf of Petitioners. Respondent was represented by Marcus A. McAskin, Esq. Petitioners are protesting the 2015 actual value of the subject property.

Subject property is described as follows:

**1507 Montoya Lane, Hartsel, Colorado
Park County Schedule No. R0022705**

The subject property consists of an 840-square-foot ranch home situated on a 40-acre site. The home includes two bedrooms and one bath. The home has solar power and cistern, but no on-site well. The property also includes a 1,440 square foot residential metal storage building. The quality and condition of the improvements were rated as “average” by Park County based on Best Information Available (BIA) as inspection was not permitted. The subject is classified as residential improvement on agricultural land.

Petitioners are requesting an actual value of \$75,000 for the subject property for tax year 2015. Respondent assigned a value of \$99,158 for the subject property for tax year 2015.

Petitioner, Mr. Smith, presented eight comparable sales ranging in sale price from \$1.00 to \$279,000. Mr. Smith made various adjustments to the sales including adjustments for well, electricity, land, and solar power. After adjustments, the sales ranged from \$1.00 (Petitioner’s Sale Seven) to \$100,800 (Petitioner’s Sale One). Petitioners estimated the value of the subject using the

adjusted per square foot prices indicated by the comparable sales. Eliminating Sale Seven, a quit claim deed sale between related parties with a sale price of \$1.00, the remaining sales indicate a per square foot range of \$8.79 (Petitioner's Sale Eight) to \$120.00 (Petitioner's Sale One). Applied to the subject's size at 840 square feet, the sales indicate a range in value of \$7,383.60 to \$100,800 for the subject.

Petitioners provided only minimal information about the comparable sales to the Board: schedule number, grantor/grantee, sale date, sale price and deed type. Such crucial information as description of physical characteristics of each comparable and its location in relation to the subject property was omitted. Upon the Board's inquiry as to the additional documentation relating to Petitioners' comparables, Mr. Smith requested the Board to conduct its own research.

Mr. Smith contends that the subject is being singled out by the County and taxed unfairly. In addition to the sales data, he presented numerous photos of properties located within approximately five-mile radius of the subject to demonstrate to the Board the negative aspects of the area. Mr. Smith also contends that there were errors and omissions in the Assessor's sales database. He further stated that the Assessor should have performed inspection of the subject prior to Petitioners' appeal to the Board.

Petitioners are requesting a 2015 actual value of \$75,000 for the subject property.

Respondent presented a value of \$99,158 for the subject property based on the market approach. Respondent's witness, Ms. Abby Carrington, Certified Residential Appraiser with the Park County Assessor's Office, presented six comparable sales ranging in sale price from \$129,000 to \$190,000 and in size from 624 to 960 square feet. All six sales were considered equal to the subject in terms of quality, condition, and off-grid power supply. After adjustments (including adjustments for economic area, square footage, age, well, out buildings, etc.) were made, the sales ranged from \$122,418 to \$233,231. Ms. Carrington established the value of the subject without agricultural classification towards the lower end of the range, at \$131,641. The subject has been given an agricultural classification despite some concerns that the residence might not be integral to the agricultural operation. Therefore, a vacant land value of \$33,000 was deducted, and the agricultural land value of \$518 was added to indicate a total value of \$99,158, with \$98,641 attributed to the building.

Ms. Carrington testified and presented evidence that she had requested an exterior and interior inspection of the home and storage building, but her request was denied by Petitioners. Ms. Carrington's analysis of the subject was based on the BIA from past inspections and file data.

Respondent assigned an actual value of \$99,158 to the subject property for tax year 2015.

The Board is required as part of its decision-making function to hear and consider the evidence, often conflicting, presented during the course of the appeal hearing. The legal duty of the Board is to weigh the evidence presented to it during hearing to resolve any conflicts in the evidence presented. The Board is required to make its findings based on the evidence it finds most credible

and persuasive, then it must apply the facts as it finds them to the applicable law in order to come to its decision.

Mr. Smith presented limited information concerning the comparable sales relied on by Petitioners, repeatedly requesting the Board to conduct research for additional information. The Board is an independent administrative agency that does not have access to the Park County's sales data. Moreover, the burden of proof is on Petitioner, not the Board, to show that the county's valuation of the subject property is incorrect by a preponderance of the evidence. *BAA v. Sampson*, 105 P.3d 198 (Colo.App.2005).

Because critical information was missing from Petitioners' analysis, the Board was unable to determine how similar/dissimilar Petitioners' comparables were to the subject property. Moreover, lack of property descriptions made it impossible for the Board to evaluate the appropriateness of Petitioners' adjustments to those sales.

Of the eight sales utilized by Mr. Smith, the Board was convinced that four were not appropriate for analysis. Respondent testified that Petitioners' Sale Two was not habitable at the time of sale based on the MLS data. Sale Three was three times the size of the subject, and Petitioners did not make an adequate adjustment for size. Sale Seven was a quit claim deed sale transferred between related parties for a \$1.00 consideration. Sale Eight involved the sale of land only. Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence..." *Board of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). The Board finds that Petitioners presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2015.

Respondent's witness correctly completed a site-specific market analysis of the subject property comparing sales of similar properties and adjusting for differences in characteristics. Ms. Carrington presented six sales of similar sized homes located on sites similar to the subject. All six properties offered off-grid power, with market supported adjustments made for differences in water source, size, additional structures, and age. After adjustments were made, the sales ranged from \$122,418 to \$233,231. Further supported adjustment was made to deduct residential land value and apply a significantly lower agricultural land value. The Board was not convinced that the subject residence was integral to the agricultural operation; however, insufficient evidence was presented to change the classification. The Board finds Respondent's market analysis to be persuasive and sufficient to overcome Petitioners' assertions of error.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered)

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 19th day of February, 2016.



BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Sondra W. Mercier

Sondra W. Mercier

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Milla Lishchuk
Milla Lishchuk